

**Utah Solid and Hazardous Waste Control Board**  
**Utah Department of Environmental Quality, Room 101**  
**168 North 1950 West (Bldg. #2), SLC, Utah**  
**MEETING MINUTES**  
**August 9, 2007**  
**1:00 p.m.**

**Board Members Present:** Carlton Christensen (Chair), John Newman (Vice Chair), Craig Anderson, Michael Brehm, Scott Bruce, Kory Coleman, Jeff Coombs, R. Ryan Dupont, Gary Mossor, Kevin Murray, and Rick Sprott.

**Board Members Excused:** Craig Forster, Dennis Riding

**Staff Members Present:** Ed Costomiris, Marty Gray, Rusty Lundberg, Dale Marx, Rick Page, Cheryl Prawl, Pat Sheehan, Doug Taylor, Don Verbica, John Waldrup, Otis Willoughby, Raymond Wixom

**Others Present:** Ben Clayton, Joe Heckman, Chuck Hendray, Jason Hill, Patti King, Walton Levi, Elizabeth Lowes, Jerry Miller, Tim Orton, Lowell Peterson, R. Jason Reed, Trace Salmon, Kris Snow, Angela VanDam, Robert Yarosik

**I. Call to Order**

Carlton Christensen, Chairman, called the meeting to order at 1:02 p.m. Craig Forster was excused from the meeting. It was also noted that Scott Bruce would be arriving late.

**II. Acknowledgment of Outgoing Board Member**

Carlton Christensen presented a plaque to Dianne Nielson in recognition of her many years of service on the Board. Dr. Nielson served as the Executive Director of UDEQ, and represented the Department on the Board for fourteen years, from 1993-2007. Dr. Nielson thanked the Board and stated it had been an honor and a privilege to serve with all the Board members over the years as well as with the DSHW and DERR staff. Dr. Nielson commented on the excellent direction provided by the Board and staff for the State of Utah, specifically in policy issues. Dr. Nielson also expressed appreciation for all the work that has been accomplished over the years by the Board and thanked the Board and the staff for all their efforts and contributions to the State of Utah.

Dr. Nielson is the new Energy Advisor for the Governor and is involved in energy generation and efficiency issues in the State of Utah, including the Governor's energy efficiency initiative involving buildings and vehicles. Dr. Nielson is also involved in the Blue Ribbon Advisory Council on Climate Change that will be providing recommendations to the Governor on ways of reducing greenhouse gas impacts in the State, while still maintaining the quality of life and the energy resources that Utahans enjoy. Dr. Nielson encouraged Board members to contact her if they have any suggestions, questions, or concerns on any of the issues she is now involved in. On behalf of the Board, Mr. Christensen wished Dr. Nielson well in her new position and assignments.

**III. Approval of Meeting Minutes for the June 14, 2007 Board Meeting (Board Action Item)**

**John Newman moved to approve the June 14, 2007 meeting minutes. The motion was seconded by Kory Coleman and UNANIMOUSLY CARRIED.**

**IV. Sunset Review of the UST Statute/UST Statistical Summary**

Brad Johnson explained to the Board members that by Utah Law, the State Legislature is required to review statutes periodically to determine if they are still necessary and applicable. The Underground Storage Tank (UST) Statute is up for review this year and on July 18, 2007, Mr. Johnson gave a PowerPoint presentation to the Natural Resources, Agriculture and Environmental Interim Committee (Interim Committee) about the program. Mr. Johnson provided the Board members with this same presentation. (A copy of this presentation is available with the meeting minutes.) The presentation included a brief overview of the UST Program, and the

accomplishments and challenges the program has faced since its inception. After discussing this issue in further detail, the Interim Committee made a decision to reauthorize the UST Statute for another 10 years.

#### **V. PST Fund Audit Report Update**

Mr. Johnson continued on with his PowerPoint presentation by stating that the report prepared by the Legislative Office of the Auditor General on their audit of the Petroleum Storage Tank (PST) Fund had been released to the general public. After working with the Division of Environmental Response and Remediation (Division) for approximately three months, the results of the audit included the following:

- No compelling need to privatize the fund;
- Non-financial methods do not qualify as financial assurance; and,
- Potential conflicts inherent in administering the fund and regulating the industry are minimized.

The auditors also made four recommendations to the Division on how to improve their administration of the fund. The Division is currently working on implementing each of these recommendations, which include:

- Clarify when it is permissible for staff to write work plans;
- Develop performance measures to analyze cases for closure;
- Develop caseload performance measures for old cases; and,
- Develop processes to document start-up remediation systems and site visits.

#### **VI. Proposed UST Legislation to incorporate Federal Energy Act provisions**

Mr. Johnson finished his PowerPoint presentation by explaining that the Federal Energy Policy Act of 2005 (Energy Act) includes a subtitle that amends the Underground Tanks Compliance Act on a federal level. However, the Energy Act refers directly to the Federal Solid Waste Disposal Act. In contrast, the Utah UST Act references the Resource Conservation and Recovery Act (RCRA). This causes the Division's statutory authority to be tied to RCRA and not the Solid Waste Disposal Act. Due to this difference in reference, it is possible for someone to argue that the Division does not have the legal authority to implement the provisions of the Energy Act. As such, the Division asked the Interim Committee during the meeting to sponsor a Bill to change this reference. After discussing this issue, the Interim Committee voted in favor of a Committee Bill that will make this change during the next Legislative Session.

John Newman asked that with the balance of the PST Fund now increasing instead of declining, what measure was taken by the Division that caused this turnaround. Mr. Johnson stated that this change was caused by the surcharge fee being revised to ½ cent per gallon instead of ¼, by changing the amount of monitoring, such as quarterly to annually, on sites where the Division was monitoring natural attenuation, and by streamlining some of the Division's processes. However, most of the change could be attributed to the increase in the surcharge fee.

Carlton Christensen inquired as to why certain releases were found during a facility's acquisition or sale, and not caught during normal monitoring or inspections of the facility. Mr. Johnson explained that all of the leak detection equipment that is installed on tanks are designed to detect leaks that would happen normally. However, most of these tanks had leaked historically and these releases were not detected until the tank was closed, or upon the sale or acquisition of the facility.

#### **VII. Facility Perpetual Care Fund Legislation**

Dennis Downs reviewed the issue of long-term care at land disposal facilities, specifically EnergySolutions (low-level radioactive waste landfill) and Clean Harbors Facilities (Grassy Mountain Landfill). Currently, hazardous waste landfills are required to have financial assurance to pay for care and maintenance of the landfill for 30 years after closure. These funds are available to the State of Utah to provide post-closure care of the site or to address and mitigate any environmental impacts, should the facility not be able to meet its post-closure obligations.

The Utah State Legislature is concerned with care and maintenance of these facilities beyond the 30-year post-closure period. Currently, the Radiation Control Act requires 100 years of perpetual care beyond closure for radioactive waste landfills. The Division of Radiation Control and the Radiation Control Board are working with EnergySolutions to address this issue. The issue of perpetual care for hazardous waste landfills, such as Clean Harbors, has been raised.

Mr. Downs reminded the Board of the URS Report that evaluated the issue of perpetual care at radioactive and hazardous waste landfills and made some recommendations regarding the need for a perpetual care fund. The URS Report was reviewed and approved by this Board and its recommendations were presented to the Legislature by Craig Anderson last year. There are some legislators who would like to put something in place to address this issue.

The Radiation Control Board has worked with EnergySolutions in putting together a proposal that appears to be satisfactory. This proposal will be presented to the Legislative Interim Committee on September 19, 2007. There is also the expectation that an update or report will be provided on the status of perpetual care for hazardous waste landfills. The Division has been working with Clean Harbors to address this issue.

Craig Anderson commented that when he presented the recommendations in the URS Report to the Legislative Interim Committee, Senator Bell was moving forward on this issue and during that same time Clean Harbors was looking into other options.

Lowell Peterson, on behalf of Clean Harbors Environmental Services, Inc. provided the following statement:

*On November 15, 2006, Phil Retallick, Senior Vice President, Compliance and Regulatory Affairs for Clean Harbors provided testimony before the Natural Resources, Agriculture and Environmental Interim Committee of the Utah State Legislature. He addressed proposed legislation concerning the establishment of a Perpetual Care Fund for Commercial Hazardous Waste Landfill Facilities operating in the State of Utah. In his testimony, Phil emphasized the unique geological, hydrologic, climatologic and land-use characteristics associated with the Grassy Mountain Facility that together make this facility a very low risk location for construction and operation of a hazardous waste landfill.*

*Additionally, Phil remarked that much of the hazardous waste disposed at Grassy Mountain must be stabilized and/or encapsulated with different types of cements and polymers before the waste can be placed into the triple-lined landfill. This is both a state and federal requirement under the Land Disposal Restriction Requirements of the Resource Conservation and Recovery act commonly referred to as RCRA. A combination of the Stabilization and Encapsulation Process coupled with the triple landfill liner design and very low area rainfall work together to make a landfill release to ground water highly unlikely.*

*It is also important to note that the groundwater underlying the Grassy Mountain Landfill Facility is brackish due to naturally occurring salt deposits in the area making the uppermost aquifer un-drinkable.*

*Phil also referred to the Federal legislation that established the rules for the management of hazardous waste. He stated that the establishment of a perpetual care fund is contrary to Congressional intent embodied in the RCRA Act and its amendments which were passed in 1980 and 1984.*

*For all of the reasons stated above, Clean Harbor's position then and now is that a dedicated Perpetual Care Fund, for the purpose of monitoring the Grassy Mountain Facility, after 30 years of post-closure care funded by Clean Harbors, is not necessary. Moreover, Clean Harbor's position is that no other regulated landfill operating within the Tooele County Hazardous Waste Corridor should be burdened with a Perpetual Care Funding Requirement.*

*Clean Harbors continues to believe that the Utah Legislature and the Solid and Hazardous Waste Board ought to focus attention on the 49 (see attached list) other public and privately – owned and operated landfills that are not subject to the same stringent financial assurance and siting criteria as a RCRA – Permitted Landfill but will need even more active monitoring, post-closure. Many of these solid waste landfills receive Household Hazardous Waste, which is not stabilized or encapsulated before being placed in the landfill cell. Should there be a breach in the landfill liner system, these hazardous wastes can migrate to nearby drinking water aquifers and pose risks to those who use the aquifers for drinking water purposes. Note that the same scenario is not likely to happen at Grassy Mountain because of the unique siting criteria in the Tooele Hazardous Waste Management Corridor.*

*In this regard, we offer the following recommendations for the Board's consideration:*

- 1) The Board should recommend that the Utah State Legislature establish a Household Hazardous Waste Collection and Disposal Fund. This fund would provide grants to municipalities and counties to establish Permanent Household Hazardous Waste Collection Centers and help divert hazardous waste from municipal and privately- operated landfills reducing future risks to sensitive ground water aquifer areas near these landfills.*

- 2) *The Board should recommend that the Utah State Legislature establish a Solid Waste Landfill Risk Pool to be funded through a small tipping fee charge on every ton of solid waste received and disposed at the 49 permitted and operating landfills in the state of Utah. The risk pool would accumulate funds that can be used to remediate any releases from the operating and closed landfills. Interest from this Fund could also be used to augment grant funding for the Household Hazardous Waste Collection Centers noted in recommendation Number 1 above.*

*We understand that Energy Solutions may be willing to establish a Voluntary Perpetual Care Fund tailored to their own unique radioactive waste disposal operations and needs. From a public policy and perception of risk perspective, Energy Solutions may need to go down that road in order to garner support for future radioactive waste business needs. However, we continue to believe that their landfill operations pose minimal risk to human health or the environment, post-closure because of the unique design of the landfill cells coupled with a lack of contaminant transfer mechanisms since there is not potable ground water in the area nor are their surface waters that could be impacted by the closed facility.*

*We welcome the opportunity to work with the Utah Solid and Hazardous Waste Control Board and the Utah State Legislature to implement risk reduction recommendations, such as those expressed above in a timely way.*

*Thank you for the opportunity to present Clean Harbor's position on this important matter.*

Dennis Downs noted that Clean Harbors' comments were presented as recommendations, which they would like the Board to approve, and forward to the Utah State Legislature. However, Mr. Downs reminded the Board that because this item was not on the Agenda as a Board Action Item, it would not be appropriate for the Board to vote on Clean Harbors recommendations at this time. Mr. Downs also explained that the Clean Harbors recommendations are not part of the URS original report, as the original report was specific to hazardous waste land disposal facilities only. However, if the Board supports the recommendation that other types of waste disposal facilities be required to establish a perpetual care fund, then the Board needs to decide to go that direction and vote.

Mr. Downs reminded the Board that it can reaffirm its original position that a perpetual care fund is needed and present this recommendation to the Legislative Interim Committee in September. However, if the Board is not ready to do that, or wishes to propose something different, such as the proposal presented by Clean Harbors, the Board will need to decide what position it would like to take on this issue and prepare a recommendation for the Interim Committee.

Kory Coleman sympathized with the concerns stated by Mr. Peterson because, as an owner of multiple landfills, he experienced a similar situation where a fee was imposed, almost putting the company out of business. Mr. Coleman felt that all the concerns should be addressed, particularly the differences in the various types of facilities and the potential repercussions that could result from a requirement for perpetual care.

John Newman agreed with Mr. Coleman and asked for a staff analysis on this issue. Mr. Newman stated that when Craig Anderson presented the findings and recommendations from the original URS Report, the Board had one perception of how to deal with this issue. Now various other ideas have been brought forward. Mr. Newman requested that a staff matrix or a staff analysis be prepared for the Board comparing the pro's and con's of each recommendation. Mr. Downs responded that such an analysis would be difficult to prepare, as there are not resources available to do another study.

Mr. Newman clarified that he is requesting a matrix showing the similarities of the URS Report versus the Clean Harbors Report. Mr. Newman also requested that copies of all items regarding this issue be provided to the Board again so it can make an informed decision. Mr. Downs reiterated that, at this time, the Division is not in any position to make any recommendations to the Board. Mr. Downs reminded the Board that this issue was originally brought up by EnergySolutions, not by UDEQ. EnergySolutions proposed to the Legislature that hazardous waste land disposal facilities be required to provide perpetual care. Now, Clean Harbors is broadening the issue even further, going significantly beyond the original issue that the Legislature requested the Board to review.

Craig Anderson stated that the Utah State Legislature initiated the process and requested the URS Report, which was prepared, reviewed and approved by the Board and submitted to the Legislative Interim Committee. If the

Utah State Legislature wants to examine other options or go beyond the parameters in the original report, then that would be their initiative.

Dennis Downs stated that all information regarding this issue including the URS Report, and Lowell Peterson's statement can be provided again to the Board members. The Board members could review all the information prior to the next meeting. At that time, the Board could make a determination if it wants to make a different recommendation to the Legislative Interim Committee or reaffirm the original recommendation or perhaps even ask for the will of the Legislature on how to proceed from this point forward.

Mr. Newman thanked Mr. Downs for the clarification regarding the original report and what the Board was involved in doing. Mr. Newman stated that he got the impression from the introductory comments that the Board was expected to give a recommendation and he was not comfortable in doing that, because he was not familiar with all the elements of this issue. Mr. Newman agreed with Mr. Downs and felt that the Board is not ready to make a recommendation unless the Utah State Legislature requests the review of the original report and/or Lowell Peterson's comments.

William J. Sinclair, Deputy Director of UDEQ, and Legislative Liaison between UDEQ and the Legislative Interim Committee, explained that the URS Report was originally produced because of a statutory requirement. This decision was based on a series of discussions with the Legislative Hazardous Waste Tax Policy and Regulation Task Force. This Task Force met over a two-year period and one of its recommendations was that the issue of a perpetual care fund for all commercial facilities be put in statute and examined on a five-year basis.

The first report was due to the Utah State Legislature in 2006. So, when Craig Anderson reported on the URS Report to the Interim Committee in 2006, the Board fulfilled its statutory requirement. Also, as a result of the URS Report, other recommendations were made. However, the Legislature was hesitant to fully implement some of the recommendations outlined in the URS Report, and tried to determine what would be the next appropriate step. Some legislators, including Senator Bell, who was prepared to run legislation requiring a perpetual care fund for hazardous waste facilities, decided instead to give both EnergySolutions and Clean Harbors the opportunity to review this issue, including the recommendations made in the URS Report, and propose to the Utah State Legislature alternatives other than those presented in the original URS Report. EnergySolutions and Clean Harbors were both instructed to report to the Natural Resources, Agriculture and Environmental Interim Committee in September 2007. Therefore, this issue will be on the Board's agenda in September 2007, with the idea that other options for perpetual care would be discussed.

Carlton Christensen asked if the Legislative Interim Committee expected the Board's response to EnergySolutions and Clean Harbors proposals or a neutral stance. Mr. Sinclair felt that the Utah State Legislature expects the Board to look at the issues, and review all the options presented and propose the best policy for the Legislature to pursue. Therefore, the Board needs to evaluate this issue and make a decision and present that decision to the Legislative Interim Committee and the Legislature can proceed as it sees fit.

Michael Brehm asked if this issue coming back to the Board after September is practical. Mr. Sinclair stated that the purpose of going to the September Legislative Interim Committee is to provide a status report. Mr. Brehm noted that he learned what the Legislature thought of the Board's earlier efforts and wondered if there is a better way to give feedback. Mr. Brehm felt that if the Board was asked to take an action, it would have been helpful if the Department could have brought the whole issue to the Board to explain the process earlier than today. Mr. Brehm also stated that Mr. Peterson's remarks regarding the nature of the facility were compelling and questioned if the URS Report addressed this issue.

Mr. Downs stated that the URS Report did address these issues and the contractor came up with reasons why a perpetual care fund was still necessary. Mr. Downs noted that the URS Report did not address, nor did the Utah State Legislature ask to be addressed, the issue of including other waste disposal facilities that are not specifically commercial hazardous waste disposal facilities as proposed by Mr. Peterson. Mr. Downs further stated that the Legislature's interests and comments were specific to commercial hazardous waste and radioactive facilities, yet Clean Harbors is now adding an entirely new issue to the discussion. This new proposal deflects the focus from the original issue and cannot be resolved within a month. Mr. Downs said he is not sure if it was ever the Legislature's intent for the Board to look at all these other facilities.

Mr. Downs also stated that he feels the responsibility of the Board at this point is to address the issue that was originally put before them and decide whether or not to stand by the URS Report. Mr. Downs explained that he has been working with Clean Harbors over the last year to address this issue, and nothing had been done, except

for last week, when Mr. Peterson asked to bring the presentation before the Board. This is the first specific proposal regarding this issue that Clean Harbors has presented within the last year. Mr. Downs felt that the first thing that needs to be done is to determine if a perpetual care fund is even needed for Clean Harbors, given their arguments as to why it may not be necessary. In doing so, the Board must remember that it accepted the URS Report and the recommendations for a perpetual care fund.

Ryan Dupont, stated as a new Board member, he would like to evaluate the recommendations in the URS Report before making any decisions. Mr. Sinclair reminded the Board that it was asked to evaluate whether to require perpetual care at a hazardous waste facility beyond the post closure period. The URS Report answers that question and recommends that a perpetual care fund be required statutorily by the Utah State Legislature. Specifically, what that means is that once post-closure care is completed at the Grassy Mountain Facility, Clean Harbors would be required to fund and implement perpetual care of the facility.

Kevin Murray felt this issue was addressed previously and saw it as more of a legislative issue. If the Utah State Legislature wants to expand the scope of what it wants the Board to do, then the Legislature needs to inform the Board and give the Division the resources to evaluate the issue(s).

Gary Mossor stated that he agrees with Mr. Downs and although he appreciates Mr. Peterson's comments, it muddies the waters to introduce other issues to the Board. However, Mr. Mossor stated that Mr. Peterson made one good comment that was not clearly pointed out in the URS Report. This being the fact that the landfills at Grassy Mountain that receive RCRA waste are triple lined synthetic landfills and the RCRA standard is dual lined synthetic landfills. The landfills are already built to exceed the RCRA regulations. Mr. Mossor stated he did not vote for, and again affirmed his opposition to a perpetual care fund for the Clean Harbors Facility.

Don Verbica commented that the URS Report recommended a fund that would be funded at \$35,000 per year while the facility is currently operating. This amount per year should generate enough money so that when operations cease and when combined with the interest off the fund, there would sufficient funds to provide for perpetual care.

Carlton Christensen requested that a copy of the URS Report be provided to all Board members again.

Lowell Peterson stated that after the presentation to the Interim Committee, discussions did take place with Senator Bell. The two proposals presented today were discussed with Senator Bell and he asked Clean Harbors to pursue them. Mr. Peterson agreed with Mr. Downs that this issue should have been addressed months ago; however, it had been discussed with Senator Bell.

Carlton Christensen suggested a small sub-committee work on this issue and generate an official response on behalf of the Board to present at the September Legislative Interim Committee. The response will go out in the packets for all Board members to review and approve. Mr. Christensen stated that if a response is needed, he would be more comfortable going in that direction. John Newman stated that he felt that the problem with going that route is trying to make a decision with lack of information. Mr. Newman stated that when the URS Report was approved by the Board and Mr. Anderson was tasked to present the Board's recommendation to the Legislative Interim Committee, it was with great trepidation that he agreed to approve the URS Report. Now however, there are so many other variables being presented, he would be uncertain as to what type of vote he would render, unless a good evaluation is presented.

Carlton Christensen asked Mr. Newman to clarify if he is referring to the URS Report only. Mr. Newman responded that if changes were made in any way to the URS report, he feels he would need a great deal of information before voting on it.

Raymond Wixom reviewed how this matter is presently before the Board, and stated that it is not clear at this point if the Utah State Legislature has tasked the Board to do anything. In reviewing what was discussed at the Legislative Interim Committee meeting last fall, no additional assignments were given to the Board or the Executive Secretary. Mr. Wixom stated he is unclear as to what the Board would be voting on, since the Board already approved the URS Report and adopted the URS Report as the Board's position.

Carlton Christensen stated that he understood William Sinclair's comments to mean that the Legislature was expecting some type of response and therefore, that response should reflect agreement by a majority of the Board. Mr. Wixom suggested that before the Board takes any action, it should be clear what that action is. Michael Brehm stated that the Board acting quickly in a small group would not be a good idea, given the importance of the

issue. Mr. Brehm also stated that if an action is requested, he would feel more comfortable if the Board would follow the pace of the normal Board activities.

William Sinclair explained that the issue of perpetual care was put on the master study resolution list to be studied by the Legislature. Items on that list are assigned to interim committees to review and discuss between general sessions. The Natural Resources, Agriculture and Environmental Interim Committee was assigned to review this issue. Mr. Sinclair stated he has been working with legislators to get this topic assigned to the committee for discussion and that is why it is on the September agenda. If the Board feels it is too soon, then the issue could be postponed. The Interim Committee's expectation is that a status report be given. Carlton Christensen stated the formal response he would make to the Interim Committee on the status would only be that Clean Harbors' proposal goes beyond the scope of what the Board was originally tasked to do and the Board has not reviewed Clean Harbors' recommendations. Mr. Christensen wants the Board to be comfortable with his presentation to the Interim Committee.

Scott Bruce stated that the Board was asked to review the URS Report, which has been done. Therefore, the Board has fulfilled every part of its requirement until the Legislature tasks the Board with another request.

Carlton Christensen stated that the status report will be short and will consist of what was stated above.

## **VIII. Used Oil Section**

### **A. Proposed Stipulation and Consent Order between the Board and Thermo Fluids (Board Action Item)**

Patrick Sheehan reviewed the proposed Stipulation and Consent Order (SCO) No. 0703009 between the Board and Thermo Fluids, Inc. Thermo Fluids collected and processed approximately 3,000,000 gallons of used oil in 2006. Almost all of the used oil collected is processed into burner fuel. Findings documented during an inspection on September 13, 2006 led to the issuance of a Notice of Violation (NOV), No. 0612046, to Thermo Fluids, Inc., on January 24, 2007 as Thermo Fluids, Inc. failed to record EPA ID Numbers of used oil generators and burners. To resolve the NOV, a proposed SCO has been negotiated with Thermo Fluids, Inc. Under the terms of the proposed SCO, Thermo Fluids, Inc. will pay a penalty of \$1,200.00 within 30 days of the effective date of the SCO. Also, Thermo Fluids has agreed to enter the EPA ID Numbers into their database, therefore, when the paperwork is generated daily for the drivers, the EPA ID Numbers will already be listed.

A 30-day public comment period on the proposed SCO was held from June 11, 2007 to July 10, 2007. No public comments were received. The Division recommends the Board approve the proposed SCO.

**It was moved by John Newman and seconded by Gary Mossor and UNANIMOUSLY CARRIED to approve the Proposed Stipulation and Consent Order (SCO) No. 0703009 between the Board and Thermo Fluids, Inc.**

## **IX. Commercial Federal Facilities Section**

### **A. Proposed Stipulation and Consent Order between the Board and Northeast Casualty Real Property, Clive Facility (Board Action Item)**

Dennis Downs clarified that the Northeast Casualty Real Property, Clive Facility is owned by Clean Harbors, Inc., and is a support location for trans-shipment and storage of bulk solids only. Edward Costomiris reviewed the proposed Stipulation and Consent Order (SCO), No. 0701006, between the Board and Northeast Casualty Real Property to resolve Notice of Violation (NOV) No. 0612049 issued on January 19, 2007. The violations included the following: Failing to maintain a rail door on the Thaw Unit; Failing to maintain the concrete coating in the Truck Wash; Failing to have the words "hazardous waste" and the date accumulation began on containers of site-generated waste and failing to keep the containers in a closed condition; Failing to assign a unique identifier to contains of waste in storage; Failing to empty sumps and secondary containment of water and waste; Failing to accurately indicate container locations; Failing to manage leaking containers properly; Failing to remediate a spill of hazardous waste, while being transported; Failing to maintain copies of inspection records at the facility; Accumulating hazardous waste longer than 90 days; and, Failing to conduct inspections.

The violations have been resolved. To resolve the NOV, a proposed SCO has been negotiated with Northeast Casualty Real Property. Under the terms of the proposed SCO, Northeast Casualty Real Property will pay a penalty of \$77,437.00.

A 30-day public comment period on the proposed SCO was held from June 5, 2007 to July 5, 2007. No public comments were received. The Division recommends the Board approve the proposed SCO.

**It was moved by Gary Mossor and seconded by Michael Brehm and UNANIMOUSLY CARRIED to approve the Proposed Stipulation and Consent Order (SCO) No. 0701006 between the Board and Northeast Casualty Real Property, Clive Facility.**

**B. EnergySolutions LLC request for a one-time, site-specific treatment variance for cemented uranium extraction process residues (Informational Item Only)**

Otis Willoughby discussed EnergySolutions' request for a one-time, site-specific treatment variance for the Mixed Waste Facility. The Mixed Waste Facility proposes to receive cemented monoliths containing enriched uranium residuals. This material retains hazardous waste codes for barium, cadmium, chromium, and spent solvents. The generator has encapsulated the waste in concrete for security reasons.

EnergySolutions proposes to receive this waste for macroencapsulation and direct disposal in the Mixed Waste Landfill Cell rather than prior chemical stabilization, as required. This request is based on the fact, that the waste has already been encapsulated in concrete at the generator's site. Treating this waste by the required method would mean grinding the waste and potentially exposing workers to unnecessary contamination and potential security risks. The proposed treatment will further encapsulate the waste and protect it from contact with precipitation, thereby decreasing the potential of leaching. EnergySolutions may receive up to 4,500 cubic feet of this waste. Final disposal of the waste will occur in the Mixed Waste Disposal Cell at the EnergySolutions Mixed Waste Facility.

A 30-day public comment period on the variance request will be held August 2, 2007 to September 3, 2007. A public hearing on this issue will be held in the Tooele County Courthouse on August 16, 2007 at 6:00 p.m. This is an information item before the Board

Tim Orton, representative of EnergySolutions, stated that Board has the authority to grant a variance from the rules if the requestor (EnergySolutions) can prove it is inappropriate to require the waste be treated to the level specified in the treatment standard or by the method specified as the treatment standard, even though such treatment is technically possible. Mr. Orton stated that the waste was generated as part of a uranium recovery process. The process residuals are in the form of an "ash". The ash was collected in small cans approximately 2 ½ gallons (coffee can size containers.) For purposes of safety, security, and transportation, the ash is encapsulated into 16-gallon drums and filled with cement and will be transported to EnergySolutions. The ash has been analyzed, and contains elevated concentrations of barium, cadmium, and chromium, and normally would require stabilization treatment. However, in this case, because of the security issues involving the enriched uranium, safety, and how it has already been placed in cemented monoliths, EnergySolutions requests a variance to utilize the macroencapsulation technology that has been approved by the State of Utah. This waste meets all license conditions for radioactive waste disposal at the facility.

Gary Mossor asked what will happen to the drums filled with cement. Mr. Orton explained that the next step is marco vaults. The enriched uranium will be placed in the vaults and will meet the RCRA definition of macroencapsulation.

**C. Proposed Stipulation and Consent Order between the Board and Clean Harbors, Aragonite Facility (Informational Item Only)**

Rick Page discussed the proposed Stipulation and Consent Order (SCO), No. 0702007, to resolve Notice of Violation and Compliance Order (NOV/CO) No. 0611043, issued to Clean Harbors Aragonite on December 15, 2006. The NOV/CO covered a period of inspections from October 2005 through September 2006. Violations included the following: failing to unload transport vehicles carrying containers within the required timeframes; failing to track wastes properly; failing to record and preserve the history of containers; placing incompatible wastes or materials in the same container; failing to flush the drum pumping system before pumping waste that was not compatible with the last waste pumped; placing reactive cyanides in tank T-404B; improperly labeling and dating containers, having open containers, and accumulating wastes in containers that were leaking; holding rejected wastes on site for longer than 30 days, failing to specify the location of all rejected wastes in the waste



tracking system, and failing to document when a waste was determined to be rejected; failing to place barcode labels on each container; failing to attempt to reconcile a manifest discrepancy with the generator and failing to notify the Executive Secretary when the discrepancy was not resolved; failing to refrigerate infectious waste; failing to incinerate infectious waste within the required timeframes; failing to properly code containers of infectious waste; conducting the radioactivity screen with the sample bottle closed and conducting the ignitability screen without heating the sample; failing to provide an automatic interlock to shut off the vacuum pump that decants a container to a direct burn tanker; failing to notify the Executive Secretary after the explosion in the drum pump station; failing to prepare and submit a complete biennial report; failing to maintain the required seals of the bulk solids enclosure during backup operations; failing to sample containers under fume exhausters; failing to properly mark all equipment; failing to document certain inspections; failing to maintain emergency equipment as necessary to assure its proper operation in time of emergency.

The violations have been resolved. The SCO includes a penalty of \$147,389.00. Forty seven thousand dollars of the penalty are being credited at fifty cents on the dollar towards two Supplemental Environmental Projects (SEPs). The first SEP will provide waste management and disposal services for the Tooele School District and the University of Utah. The second SEP will provide a brush fire truck for Tooele County.

A 30-day public comment period began on July 26, 2007, and will continue through August 27, 2007. This is an information item before the Board.

Ryan Dupont noted that many of the violations were repeat violations, and asked if there have been any improvements at the facility. Don Verbica stated that they are continuing to see similar violations. Mr. Dupont wondered if maybe the penalty amount needs to be increased since corrections are not being made. Mr. Verbica stated that repeat violations did receive increases and some were even doubled. Mr. Verbica stated by doing that, he is hoping to get the facility's attention in order to correct the issue of repeat violations.

Dennis Downs clarified that this is not the same facility discussed early regarding the perpetual care issue; however, it is the same company. Gary Mossor stated that he recently spoke with the plant manager for this facility and one of the causes for the violations was a 30% turnover rate this last year and they were not able to acquire good quality employees. Since the beginning of the year, the company has made a dramatic change in policy, including increasing salaries and providing remote pay to employees to attract employees to the 95-mile daily drive. The facility is aware of the problems and is striving to make changes.

Mr. Dupont stated that, regardless of the above issue, the company is still required to meet and comply with the rules/regulations. Mr. Downs stated that he has spoke with the company's Senior Vice-President regarding this issue who indicated that their Chief Compliance Officer recently quit, due to the daily drive. So, once again they are trying to increase the salaries to attract competent employees and are aware of the issues and are trying to deal with them. Jeff Coombs asked if the last five years, represented a trend. Mr. Verbica stated that over the last five years, the facility has increased violations.

Rick Sprott felt that the facility needs to anticipate these issues, and although it is good that they are trying to address the problem, it did not occur overnight and they need to make changes to ensure violations are handled or the amount of the penalties could increase. Kevin Murray stated that these are major facilities and the minor violations need to be handled accordingly or the penalty amount should increase.

Michael Brehm commented that this penalty amount is larger than that annual perpetual fee recently quoted and stated he actually feels better about the Board's recommendation. Gary Mossor responded that, although it is the same company, there are different budgets, situations, etc. Dennis Downs reminded the Board that the Division does not have statutory authority to assess administrative penalties. The Division cannot "fine" a company a certain amount of money. This is a negotiated settlement and if an amount cannot be agreed upon, then two other options are available. The first is to refer the case to the U.S. Environmental Protection Agency, or second, refer the matter to the Utah Attorney General's Office where a lawsuit will be filed and the judge would determine the penalty amount. (Both of these options are expensive, time consuming and resource intensive.) Therefore, the Division's goal in most cases is to agree upon a settlement. If, in any case, the Board believes the penalties are not sufficient, it is within the Board's authority to direct the staff to go back and try to negotiate a higher penalty. The Board does not have to approve the proposed settlement and the Division staff will proceed accordingly.

Mr. Verbica stated that the goal was to keep the penalty above \$100,000.00, because, as a publicly traded company, the stockholders would have to be notified. Mr. Downs stated that the dollar amount is not the great

penalty that a company gets by having these types of violations, as their customers come to the Division office to see their compliance records. This becomes a bigger issue than the penalty dollar amount because it keeps business from them. The public's perception is a big issue as well.

## **X. Chemical Demilitarization Section**

### **A. DCD request for a Treatability Study Sample – Quantity Variance (Board Action Item)**

John Waldrup reviewed the Deseret Chemical Depot (DCD) request for a variance from the 1 kg quantity limit for acute hazardous waste treatability samples as allowed in R315-2-4(e)(2)(i).

The DCD has stored various chemical warfare agents in igloos since 1944. Limited quantities of Lewisite (L) and GA are in storage at DCD. These agents were scheduled for destruction at the Chemical Agent Munitions Destruction System (CAMDS), but technology limitation prevented this treatment from occurring. The CAMDS is now on the closure track and is not programmed to treat these agents. DCD is working with the Army's Project Manager for Non-Stockpile Chemical Material to treat and dispose of all L and GA agent in storage at DCD.

DCD is requesting that a variance be granted to exceed the quantity limits allowed for the performance of a treatability study. DCD is working with the Army's Project Manager for Non-Stockpile Chemical Material to evaluate options for the treatment of lewisite (L) and tabun (GA) agents stored in ton containers. DCD will be collecting 800 mL (1.52 kilograms) of lewisite and 640 mL (0.705 kilograms) of GA. These samples will be transported to Aberdeen Proving Ground for treatability studies to determine the applicability of the Large Items Transportation and Neutralization System (LITANS) for treating these agents. By collecting the samples, it will allow Aberdeen Proving Ground to take something the size of a ton container, move it into a glove box and drill a hole inside and pump agent out of the container and then move it to a reactor vessel and neutralize it. Aberdeen Proving Ground is currently working on a one reactor vessel system, and they are also planning on placing one at DCD that will have four individual reactors attached to it. All these containers will be within a containment building with a filter system around it.

A 30-day public comment period for this variance request began on May 22, 2007 and ended on June 21, 2007. No public comments were received. A public hearing was held on July 12, 2007. The Executive Secretary recommends the Board approve this variance request.

**It was moved by John Newman and seconded by Ryan Dupont and UNANIMOUSLY CARRIED to approve Deseret Chemical Depot (DCD) request for a Treatability Study Sample-Quantity Variance from the 1 kg quantity limit for acute hazardous waste treatability samples as allowed in R315-2-4(e)(2)(i).**

Michael Brehm asked if anyone attended the hearing, as there is an interest in this facility from the public and the local community. Mr. Waldrup stated only representatives from DCD were in attendance, and no public comments were received at the hearing.

### **B. Dugway request for a Treatability Study Sample – Quantity Variance (Informational Item Only)**

Doug Taylor explained Dugway Proving Ground's variance request. Dugway is requesting that a variance be granted to exceed the quantity limits allowed for the shipment of treatability study samples. Dugway is working with the Army's Project Manager for Nonstockpile Chemical Materiel to evaluate options for the treatment of Lewisite (L) and Tabun (GA) agents stored in ton containers. Dugway is requesting authorization to ship two Department of Transportation cylinders of Mustard (HD), from Dugway to the Chemical Transfer Facility at the Edgewood area of Aberdeen Proving Ground, Maryland. The Mustard in two DOT cylinders will be used to conduct a full-scale treatability study with the Large Item Transportable Access and Neutralization System (LITANS). The proposed study will help determine how well the LITANS can treat bulk chemical agent and then be decontaminated after contact with the persistent chemical agent. The total amount of HD will be 13.82 gallons (66.73 kg). Current Utah regulations limit the shipment of acute hazardous waste to one kilogram for treatability studies.

A 30-day public comment period for this variance request began on July 10, 2007 and will end on August 13, 2007. A public hearing was held on July 31, 2007. This is an information item before the Board.

Scott Bruce asked what criteria will be used to determine what containers will be used. Mr. Taylor stated that each of the DOT containers hold approximately seven gallons of mustard and were filled in January 2001 and no heels or solids exist in the mustard. Dugway's goal is to test all the agent with the LITANS equipment to determine how the different agents react. Mr. Bruce asked if quality assurance is performed on the container. Mr. Taylor stated these are DOT containers and they are inside another container. Jason Reed, representative from Dugway Proving Ground, stated the containers are in DOT approved cylinders that will be encapsulated in a prop charge can that is a standard container for transporting energetic munitions. As far as safety concerns, it is well suited for transportation.

**C. TOCDF Update – Marty Gray**

Mr. Gray informed the Board that TOCDF continues to process the baseline ton containers and currently has processed approximately 1,800 ton containers (totaling 25% of the total mustard stockpile). The next munitions to be processed are the 155 mm projectiles. The permit modification for the destruction of the 155 mm projectiles will be released for the second round of public comments next week. This will be a 45-day public comment period.

CAMDS is proceeding with closure activities at a very slow pace. The Tennessee Valley Authority (TVA) has the Army's approval to move forward, but does not have approved closure plans. The TVA has been encouraged to work with Division staff, as major issues need to be addressed before any closure plans can be approved. At this point, CAMDS is working only on non-regulated buildings and performing some preparatory work.

**XI. Other Business**

**A. Misc. Information Items –**

Michael Brehm requested all information associated with the perpetual care fund issue, including meeting minutes and the URS Report, again be provided to the Board.

- B. The next Board meeting will be held on September 13, 2007 at 1:00 p.m. in the UDEQ, Building #2, (Conference Room 101)

- XII. The meeting adjourned at 2:53 p.m.